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Federal Communications Commission  
Office of the Secretary

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on Universal Service

Petition for FCC Agreement in Redefining )  
the Service Areas of Citizens )  
Telecommunications Company of West )  
Virginia, dba Frontier Communications of )  
West Virginia in the State of West )  
Virginia Pursuant to 47 C.F.R. Section )  
54.207(c) )  
)

CC Docket No. 96-45

**PETITION OF THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
FOR FCC AGREEMENT IN REDEFINING  
RURAL TELEPHONE COMPANY SERVICE AREAS**

October 20, 2004

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## Summary

The Public Service Commission of the State of West Virginia ("PSCWV") files this Petition pursuant to the provisions of 47 C.F.R. § 54.207(c). Under that rule, a state commission may petition the FCC for its concurrence to redefine the service areas of rural Incumbent Local Exchange Carriers ("ILECs") as something other than the ILECs' entire study areas. Redefinition of the service area of Citizens Telecommunications Company of West Virginia, dba Frontier Communications of West Virginia ("Frontier"), a rural ILEC, along wire center boundaries is necessary in connection with the PSCWV's recent designation of Hardy Telecommunications, Inc. (hereinafter referred to as Hardy) as an eligible telecommunications carrier ("ETCs") for purposes of receiving high-cost support from the federal universal service program. Because Hardy's licensed service territories do not correlate with the rural ILEC's service area, the Act provides that the rural ILEC's service area must be redefined before designation in those areas can take effect. Consistent with PSCWV's designation orders and with previous actions taken by the FCC and several other states, redefinition is requested such that the service areas of Frontier be redefined to permit Hardy to be designated an ETC in the wire center of Bluefield.

The proposed redefinition is warranted under the Commission's competitively neutral universal service policies, and it constitutes precisely the same relief granted to similarly situated carriers by the Commission and several states. Unless the relevant ILEC service areas are redefined, Hardy will be unable to use high-cost support to improve and to expand its service to consumers in many areas of its licensed service territory, and consumers will

be denied the benefits. Moreover, the requested redefinition satisfies the analysis provided by the Federal-State Joint Board on Universal Service ("Joint Board") in that it reduces opportunities for payment of uneconomic support to Hardy, duly recognizes the special status of rural carriers under the 1996 Act, and does not impose undue administrative burdens on ILECs. Finally, the FCC's *Highland Cellular* order does not prohibit the requested redefinition, because the proposed redefinition meets *Highland Cellular's* requirements.

The redefinition proposed herein is well-supported by the record at the state level, and all affected parties were provided ample opportunity to ensure that the Joint Board's recommendations were taken into account. Accordingly, PSCWV requests that the FCC grant its concurrence expeditiously and allow the proposed redefinition to become effective without further action.

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**PETITION OF THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
FOR FCC AGREEMENT IN REDEFINING  
RURAL TELEPHONE COMPANY SERVICE AREAS**

The Public Service Commission of the State of West Virginia ("PSCWV") submits this Petition seeking the FCC's agreement with the redefinition of the service areas of Citizens Telecommunications Company of West Virginia, dba Frontier Communications of West Virginia ("Frontier"), a rural incumbent local exchange carrier ("ILEC"), so that each of Frontier's wire centers constitutes a separate service area. Hardy Telecommunications, Inc. (hereinafter referred to as Hardy) has been conditionally designated an ETC in the wire centers of Moorefield, pending a grant of FCC concurrence with the redefinition proposed

herein.<sup>1</sup>

The redefinition will foster federal and state goals of encouraging competition in the telecommunications marketplace and extending universal service to rural West Virginia's consumers.

## **I. BACKGROUND**

Pursuant to Section 214(c) of the Communications Act of 1934, as amended (the Act), state commissions generally have authority to designate carriers that satisfy the requirements of the federal universal service rules as ETCs and to define their service areas.<sup>2</sup> The service area of a rural ILEC is defined as its study area. However, the Act explicitly sets forth a process whereby a competitive ETC may be designated for a service area that differs from that of the ILEC, provided the rural ILEC's service area is redefined. Specifically, Section 214(e) of the Act provides:

"Service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such company.<sup>3</sup>

The FCC and the Federal-State Joint Board on Universal Service ("Joint Board") have recognized that a strict rule requiring a competitive ETC to serve an area exactly matching

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<sup>1</sup> Frontier has three separate study areas in West Virginia: Mountain State, St. Mary, and Bluefield. The redefinition requested in this Petition pertains to all three of Frontier's West Virginia study areas.

<sup>2</sup> 47 U.S.C. § 214(c).

<sup>3</sup> *Id.*

a rural ILEC's study area would preclude competitive carriers that fully satisfy ETC requirements from bringing the benefits of competition to consumers throughout their service territory.<sup>4</sup> The FCC has established a streamlined procedure for the FCC and states to act together to redefine rural ILEC service areas.<sup>5</sup> Using this procedure, the FCC and state commissions have applied the Joint Board's recommendations and concluded that it is necessary and appropriate to redefine the ILEC service areas to permit the designation of competitive ETCs in those areas.<sup>6</sup>

Hardy was designated ETC status on August 27, 2004.<sup>7</sup> In the designation orders, PSCWV concluded that a grant of ETC status would serve the public interest, and that Hardy should be designated in those Frontier wire centers that Hardy committed to serve completely.

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<sup>4</sup> See *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order*, CC Docket No. 96-45, DA 99-1844, 15 FCC Rcd 9921, 9927 at ¶ 8 n. 40 (rel. Sept 9, 1999) ("*Washington Redefinition Order*"), citing *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 181 (1996) ("*Joint Board Recommended Decision*").

<sup>5</sup> See 47 C.F.R. § 54.207(c). See also *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8881 (1997) ("*First Report and Order*").

<sup>6</sup> See, e.g., *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, CC Docket No. 96-45, DA 01-409, 16 FCC Rcd 3558 (rel. Feb 15, 2001); *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28.

<sup>7</sup> See *Hurdy Order*.

PSCWV also found that Hardy's request to redefine Frontier's service areas satisfied the Joint Board's concerns. PSCWV further concluded that a petition should be filed to obtain the FCC's concurrence with the proposed redefinition.

PSCWV submits this Petition for concurrence, in accordance with the Hardy designation order, the Act and the FCC's rules. Specifically, the PSCWV seeks concurrence for redefinition that would involve redefining Frontier's Bluefield study area. Specifically, the *Hardy Order* of the PSCWV calls for a redefinition of Frontier's study area to permit Hardy and to be designated an ETC in the Moorefield exchange area.<sup>8</sup>

## II. DISCUSSION

The FCC should grant this Petition because (1) the requested redefinition is consistent with federal Universal Service policy, (2) the requested redefinition satisfies the three Joint Board factors under Section 54.207(c)(1) of the Commission's Rules. Ultimately, redefinition along wire center boundaries will advance the universal service goals of promoting quality service at just, reasonable, and affordable rates; access to advanced information services; and access for rural consumers to telecommunications services and rates that are comparable to those available to urban consumers.<sup>9</sup> The proceedings at the state level provided all affected parties with an opportunity to comment on the proposed redefinition, and PSCWV fully

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<sup>8</sup> See, *Hardy Order*.

<sup>9</sup> See 47 U.S.C. § 254(b).



considered and addressed the parties' arguments on this subject.<sup>10</sup> The PSCWV record well supports the proposed redefinition, and the orders designating Hardy provide the FCC with ample justification to concur.

**A. The Requested Redefinition Is Consistent With Federal Universal Service Policy.**

Congress, in passing the 1996 amendments to the Act, declared its intent to "promote competition and reduce regulation" and to "encourage the rapid deployment of new telecommunications technologies."<sup>11</sup> As part of its effort to further these goals, Congress enacted new universal service provisions that, for the first time, envision multiple ETCs in the same market.<sup>12</sup> In furtherance of this statutory mandate, the FCC has adopted the principle that universal service mechanisms be administered in a competitively neutral manner, meaning that no particular type of carrier or technology should be unfairly advantaged or disadvantaged.<sup>13</sup> Consistent with this policy, the FCC and many state

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<sup>10</sup> Frontier is the only ILEC to be affected by the redefinition and it participated fully as an active Intervenor in both cases.

<sup>11</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

<sup>12</sup> See 47 U.S.C. § 214(e)(2).

<sup>13</sup> See *First Report and Order*, *supra*, 12 FCC Rcd at 8801. Competitive neutrality is a "fundamental principle" of the FCC's universal service policies. *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, DA 03-1169, 18 FCC Rcd 7138, 7141 at ¶ 7 (rel. April 17, 2003). Moreover, the FCC has requested that the Joint Board "should address how its recommendations . . . further the universal service goals outlined in section 254 of the Act, including the principle of competitive neutrality." See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02-307, 17 FCC Rcd 22642, 22645 at ¶ 6 (rel. Nov. 7, 2002) ("Referral Order").

commissions have affirmed that ETC service areas should be defined in a manner that removes obstacles to competitive entry.<sup>14</sup> In 2002, for example, the FCC granted a petition of the Colorado Public Utilities Commission ("CPUC") for a service area redefinition identical in all material respects to the redefinition proposed in this Petition.<sup>15</sup> In support of redefining CenturyTel's service area along wire-center boundaries, the CPUC emphasized that "in CenturyTel's service area, no company could receive a designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado. . . . [T]his constitutes a significant barrier to entry."<sup>16</sup> The FCC agreed and, by declining to open a proceeding, allowed the requested redefinition to take effect.<sup>17</sup> The FCC similarly approved a petition by the Washington Utilities and Transportation Commission ("WUTC") and about 20 rural ILECs for the redefinition of the ILECs' service areas along wire center boundaries, finding that:

[O]ur concurrence with rural LEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition. The Washington Commission is particularly concerned that rural areas . . . are not left behind in the move to greater competition. Petitioners

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<sup>14</sup> See, e.g., *First Report and Order*, *supra*, 12 FCC Rcd at 8880-81; *Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c)*, at p. 4 (filed with the FCC Aug. 1, 2002) ("CPUC Petition").

<sup>15</sup> See CPUC Petition at p. 5 ("Petitioner requests agreement to redefinc CenturyTel's service area to the wire center level").

<sup>16</sup> CPUC Petition at p. 4.

<sup>17</sup> CenturyTel has petitioned the FCC to reconsider its decision. However, as of this date CenturyTel's service area redefinition is effective.

also state that designating eligible telecommunications carriers at the exchange level, rather than at the study area level, will promote competitive entry by permitting new entrants to provide service in relatively small areas . . . We conclude that this effort to facilitate local competition justifies our concurrence with the proposed service area redefinition.<sup>18</sup>

Other state commissions have similarly concluded that redefining rural ILEC service areas along wire center boundaries is fully justified by the pro-competitive goals of the 1996 Act. For example, in a decision that was later adopted by the Minnesota Public Utilities Commission, an administrative law judge ("ALJ") recommended approval of Midwest Wireless Communications L.L.C.'s proposal to redefine certain rural ILEC service areas to the wire center level.<sup>19</sup> Specifically, the ALJ concluded "[t]he service area redefinition proposed by Midwest will benefit Minnesota consumers by promoting competitive entry and should be adopted."<sup>20</sup> Similar conclusions were reached in decisions granting ETC status to wireless carriers in Arizona, New Mexico, and Maine.<sup>21</sup>

As in those cases, PSCWV believes that the redefinition requested in the instant

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<sup>18</sup> *Washington Redefinition Order, supra*, 15 FCC Rcd at 9927-28 (footnotes omitted).

<sup>19</sup> *Midwest Wireless Communications, L.L.C.*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686, Findings of Fact, Conclusions of Law, and Recommendation at ¶¶ 53-59 (Minn. ALJ Dec. 31, 2002), *aff'd* by Minn. PUC March 19, 2003 (petition for concurrence pending before FCC).

<sup>20</sup> *Id.* at ¶ 59.

<sup>21</sup> See *Smith Bagley, Inc.*, Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) (FCC concurrence granted May 16 and July 1, 2001); *Smith Bagley, Inc.*, Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm'n Aug. 14, 2001), adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002); *RCC Minnesota, Inc. et al.*, Docket No. 2002-344 (Mc. PUC May 13, 2003).

proceeding will enable Hardy to make the network investments necessary to bring competitive service to people throughout their ETC service areas. Redefinition will bring about variety in pricing packages and service options on par with those available in urban and suburban areas.<sup>22</sup> The use of high-cost support for infrastructure investment will bring improved wireless service and important health and safety benefits associated with increased levels of radio frequency coverage.

**B. The Requested Redefinition Satisfies the Three Joint Board Factors Under Section 54.207(c)(1) of the Commission's Rules.**

A petition to redefine an ILEC's service area must contain "an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company."<sup>23</sup> In the *Recommended Decision* that laid the foundation for the FCC's *First Report and Order*, the Joint Board enumerated three factors to be considered when reviewing a request to redefine a LEC's service area.<sup>24</sup> Those factors are addressed below.

**1. Hardy is not cream skimming.**

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<sup>22</sup> See 47 U.S.C. § 254(b)(3).

<sup>23</sup> See Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104<sup>th</sup> Cong., 2d Sess. at 113 (stating that the 1996 Act was designed to create "a pro-competitive, de-regulatory national policy framework" aimed at fostering rapid deployment of telecommunications services to all Americans "by opening all telecommunications markets to competition.").

<sup>24</sup> 47 C.F.R. § 54.207(c)(1). See *RCC Order* at 7; *USCC Order* at 7.

First, the Joint Board expressed concern as to whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges.<sup>25</sup> After an extensive analysis, the PSCWV found that designation of Hardy as an ETC in its respective proposed area does not result in cream skimming.<sup>26</sup> Hardy proposed ETC service areas that are coterminous with wire centers in their licensed service territories, and have committed to offer service to customers throughout their designated ETC service areas upon reasonable request. PSCWV's designation orders do not grant ETC status to Hardy for any partial wire centers.<sup>27</sup> In sum, Hardy's application to serve as ETC, as approved by the PSCWV, does not permit them to serve only low-cost areas.

Opportunities for receiving uneconomic levels of support are further diminished by the FCC's decision to allow rural ILECs to disaggregate support below the study-area level.<sup>28</sup> By moving support away from low-cost areas and into high-cost areas, ILECs have the ability to minimize or eliminate cream skimming and the payment of uneconomic support to competitors.<sup>29</sup>

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<sup>25</sup> *Joint Board Recommended Decision, supra.*

<sup>26</sup> *See Joint Board Recommended Decision, 12 FCC Rcd at 180.*

<sup>27</sup> *See Hardy Order.*

<sup>28</sup> In the Easterbrooke Order, Easterbrooke was given the option of either withdrawing the Walkersville, Thomas and Davis wire centers from its ETC designated territory, or seeking a certificate of convenience and necessity from PSCWV in order to serve those areas of the three wire centers located outside of WV RSA as a competitive local exchange carrier ("CLEC").

<sup>29</sup> *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and*

A review of the disaggregation filing submitted by Frontier reveals that cream skimming is not a concern in this case. Frontier elected to disaggregate support under Path 3 by self-certifying disaggregation plans that went into effect immediately upon being filed.<sup>30</sup>

This plan has effectively moved higher levels of support away from lower-cost, higher-density areas and to areas where costs are higher and service is needed most - thus reducing or eliminating the possibility of Hardy or any other competitive ETCs that may yet be designated, receiving uneconomic support. In its *Fourteenth Report and Order*, the FCC placed upon rural ILECs the burden of disaggregating support if they believe disaggregation is in their best interest.<sup>31</sup>

2. The PSCWV considered Frontier's special status.

Second, the Joint Board recommended that the FCC and the States consider the rural carrier's special status under the 1996 Act.<sup>32</sup> The PSCWV did so when granting Hardy's application for ETC designation. The PSCWV weighed numerous factors in ultimately determining that such designations were in the public interest. Congress mandated this

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*Interexchange Carriers, Fourteenth Report and Order, twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 01-157; 16 FCC Rcd 11244 (rel. May 23, 2001) ("Fourteenth Report and Order").*

<sup>30</sup> See *Federal-State Joint Board on Universal Service, Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order*, 16 FCC Rcd 18133, 18141 (2001).

<sup>31</sup> A checklist of disaggregation filings made by West Virginia ILECs is available on USAC's web site at <http://www.universalservice.org/hc/disaggregation/checklist/westvirginia.xls>.

<sup>32</sup> See *Fourteenth Report and Order*, 16 FCC Rcd 11244.

public-interest analysis in order to protect the special status of rural carriers in the same way it established special considerations for rural carriers with regard to interconnection, unbundling, and resale requirements.<sup>33</sup> No action in this proceeding will affect or prejudice any future action the PSCWV or the FCC may take with respect to any ILEC's status as a rural telephone company, and nothing about service area redefinition will diminish a rural ILEC's status as such.

3. Frontier will face no undue administrative burden.

Third, the Joint Board recommended that the FCC and the States consider whether rural ILECs would face an undue administrative burden as a result of the proposed redefinition.<sup>34</sup> There is no undue burden in this case. The proposal to redefine Frontier's service areas along wire center boundaries is made solely for ETC designation purposes. Defining service areas in this manner will in no way impact the way Frontier calculates its costs but is solely to enable newly designated competitive ETCs to begin receiving high-cost support in those areas in the same manner as Frontier. Frontier may continue to calculate costs and submit data for purposes of collecting high-cost support in the same manner as it does now.

**C. The FCC's Recent Highland Cellular Order Does Not Prohibit the Requested Redefinition.**

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<sup>33</sup> See *Joint Board Recommended Decision*, 12 FCC Rcd at 180.

<sup>34</sup> See *id.*

The record in these proceedings clearly shows that Hardy has met the standards of *Highland Cellular*. First, Hardy was designated in areas that do not include only portions of rural ILEC wire centers; therefore, the requested redefinition does not run afoul of the FCC's current policy concerning designation in partial wire centers, as set forth in *Highland Cellular*.

Additionally, the requested redefinition satisfies the cream skimming analysis set forth in *Highland Cellular*. *Highland Cellular* contained a more detailed analysis of cream skimming than that required by the Joint Board factors listed above that involved review of population densities and projected costs of service. In that case, the FCC granted Highland Cellular's ETC designation for most of the requested study areas but denied ETC designation for the study area of certain rural carriers where Highland Cellular's licensed service area did not fully cover the study areas.<sup>35</sup> The FCC did so because it found that Highland Cellular would be cream skimming by largely serving the lowest-cost customers in the study areas. In the study area of Verizon South, the FCC concluded that four of the wire centers served by Highland Cellular were the four highest-density "and thus presumably lowest-cost wire centers in Verizon South's study area."<sup>36</sup> The FCC determined that "94 percent of Highland Cellular's potential customers in Verizon South's study area would be located in [four of the

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<sup>35</sup> *See id.*

<sup>36</sup> *Highland Cellular* at ¶ 1.



six wire centers served by Highland Cellular]."<sup>37</sup> The FCC then denied the application as to all six wire centers in the Verizon South study area.<sup>38</sup> The FCC engaged in a similar analysis regarding the Saltville wire center of United Telephonic Company and reached the same conclusions.<sup>39</sup>

Unlike *Highland Cellular*, Hardy's customers tend to be in the lowest-density rural ILEC wire centers. The evidence in the record of Hardy's designation dockets showed that Hardy clearly satisfy the *Highland Cellular* test with respect to Frontier's relevant study areas.

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<sup>37</sup> *Highland Cellular* at ¶ 31.

<sup>38</sup> *Highland Cellular* at ¶ 31.

<sup>39</sup> *Highland Cellular* at ¶ 32.

### **III. CONCLUSION**

PSCWV has found that Hardy's use of high-cost support to increase the availability of competitive services and to invest in rural infrastructure development will serve the public interest.<sup>40</sup> Yet, without the FCC's concurrence with the Frontier service area redefinition proposed herein, consumers will not be able to experience those benefits in many areas in which Hardy is authorized by the FCC to provide service. The redefinition requested in this Petition will enable Hardy's ETC designation to take effect throughout its designated ETC service areas in West Virginia. Accordingly, PSCWV requests that the Commission grant its concurrence with the proposal to redefine Frontier's service area so that each of Frontier's wire centers constitutes a separate service area.

Respectfully submitted,

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RICHARD E. HITT, General Counsel  
WV State Bar I.D. No. 1743  
CHRISTOPHER L. HOWARD  
WV State Bar I.D. No. 8688  
Public Service Commission of West Virginia  
201 Brooks Street  
P.O. Box 812  
Charleston, WV 25323  
304-340-0334 304-340-0372 (fax)

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<sup>40</sup> See *Hardy Order* at 24-27.